NOAA and EPA Preliminary Decisions on Information Submitted by Oregon to Meet Coastal Nonpoint Program Conditions of Approval

I. ADMINISTRATIVE COORDINATION

CONDITION: Within one year, Oregon will establish a process for ensuring coordination among State and local agencies with a role in the implementation of the coastal nonpoint program.

FINDING: Oregon has satisfied this condition.

RATIONALE:
Oregon has established a process for ensuring coordination among State and local agencies to implement the coastal nonpoint program by developing formal coordination mechanisms such as memorandum of understanding, advisory boards, agency outreach to local municipalities, and having regular informal communication among parties responsible for the program.

The Department of Environmental Quality (DEQ) has signed separate Memorandums of Understanding (MOUs) with the Oregon Department of Agriculture (ODA) and the Oregon Department of Forestry (ODF) to outline agency roles in developing and revising agricultural 1010 Plans and TMDLs for forestry, respectively. Several state agencies including DEQ, ODF, the Oregon Department of Water Resources, and the Department of Fish and Wildlife, have also signed an MOU to provide for continued cooperation to achieve the goals of the Oregon Plan for Salmon and Watersheds, many aspects of which address 6217 (g) measures.

The Community Solutions Team Advisory Board is comprised of several state agencies including the DEQ, ODF, the Department of Land Conservation and Development (DLCD) and the Department of Transportation. The Advisory Board coordinates local development issues including many topics relevant to the coastal nonpoint program such as TMDLs and land use laws.

Oregon's Coastal Management Program also conducts regular outreach to local governments within the coastal zone. Discussions include development and implementation of the coastal nonpont program.

Finally, agency staff involved in the coastal nonpoint program regularly communicate with one another through informal channels. Both DEQ and DLCD have staff dedicated to the coastal nonpoint program and these individuals work with appropriate people at the other state and local agencies as needed to develop and implement the coastal nonpoint program.

II. CRITICAL COASTAL AREAS, ADDITIONAL MANAGEMENT MEASURES AND

TECHNICAL ASSISTANCE

CONDITION: Within two years, Oregon will identify and begin applying additional management measures where water quality impairments and degradation of beneficial uses attributable to forestry exist despite implementation of the (g) measures. Within two years, Oregon will develop a process for the identification of critical coastal areas and a process for developing and revising management measures to be applied in critical coastal areas and in areas where necessary to attain and maintain water quality standards. Also within two years, the State will develop a program to provide technical assistance in the implementation of additional management measures.

FINDING:

- Oregon has developed a process to identify critical coastal areas and a process to develop and revise management measures to be applied in critical coastal areas and in areas where necessary to attain water quality standards.
- Oregon has developed a program to provide technical assistance in the implementation of additional management measures.
- Oregon ***has not?*** satisfied the condition for additional management measures for forestry.

RATIONALE:

Critical Coastal Areas

Oregon has described a process for identifying critical coastal areas that considers the factors recommended in the NOAA/EPA *1993 Program Development and Approval Guidance.* Statewide Planning Goal 16, Estuarine Resources (OAR 660-015-0010(1)) recognizes the importance of protecting Oregon's estuaries where new or substantially expanding uses could cause or contribute to water quality impairment. Goal 16 requires classification of Oregon's estuaries into one of four types–natural, conservation, shallow draft development, or deep draft development. The estuary areas are further divided into "distinct water use management units" which define the permissible uses within each unit. In estuaries classified as natural or conservation, only activities which support these designations are allowed. Therefore, Goal 16 is an appropriate vehicle for identifying critical coastal areas in estuaries.

In addition, the OWEB watershed assessment protocol lays out a process to identify and map areas within watersheds that are in need of protection. Such a process is a good vehicle to identify critical coastal areas in the coastal watersheds. The watershed assessments are used to develop restoration and enhancement plans and prioritize projects within each watershed.

TMDLs and their associated implementation plans can also identify critical areas for special attention. Oregon requires that TMDLs developed for impaired watersheds be accompanied by water quality management plans (WQMP) that specify load reductions, a schedule for meeting load reductions, and management authorities responsible for achieving the load reduction. It is

anticipated that all watersheds in the 6217 management area will have TMDLs completed by 2006.

Additional Management Measures for Forestry

NOAA and EPA have determined that Oregon has not fully satisfied the condition requiring the State to identify and begin applying additional management measures for forestry in several areas critical to water quality protection.

NOAA and EPA agree that Oregon has an adaptive management process in place to identify additional management measures for forestry by using many of the same approaches as their overall strategy for additional management measures, such as the TMDL program. The ODF and the DEQ have signed a Memorandum of Understanding clearly defining each agencies' role as it applies to TMDL development in forestry areas. The MOU also describes the process the agencies will use for implementing new measures under the TMDL program.

In the 1998 rationale for findings and conditions, EPA and NOAA identified areas under the Forest Practices Act and Administrative Rules that should be strengthened to attain water quality standards and fully support beneficial uses. "These areas include protection of medium, small, and non-fish bearing streams, including intermittent streams; protection of areas at high risk for landslides; the ability of forest practices to address cumulative impacts of forestry activities; road density and maintenance, particularly on so-called "legacy" roads; and the adequacy of stream buffers for application of certain chemicals."

Oregon's recent submittals describe four related efforts that demonstrate progress on these areas of concern: (1) the Independent Multidisciplinary Science Team (IMST), convened under the Oregon Plan, which investigated forest practices in the state and made both long and short term recommendations on management changes that were needed to ensure the protection of salmon habitat; (2) recent amendments to the Oregon Administrative Rules related to forest practices; (3) the Sufficiency Analysis of the Oregon Forest Practices Act (FPA) conducted by DEQ and ODF, which reviewed the FPA's sufficiency to attain water quality standards; and (4) voluntary actions by private landowners under the Oregon Plan for Salmon and Watersheds (Oregon Plan); .

First of all, the DEQ/ODF Sufficiency Analysis contains qualified recommendations that have potential to address some of the NOAA/EPA areas of concern if enacted. Second, recommendations in the Interagency Multidisciplinary Science Team (IMST) report address most NOAA/EPA areas of concern directly: Recommendation 2 addresses landscape (large watershed) planning, Recommendations 3, 4, and 5 address adequate protection of small and non-fish bearing streams, Recommendations 8 - 12 address road maintenance including old roads and railroad grades, and Recommendation 13 addresses management in landslide prone areas. Oregon has demonstrated that it is working toward implementing these recommendations. The State has established a timeline for implementing many of the IMST recommendations and has already adopted several new provisions related to roads, landslides, and human safety.

Amendments to the Oregon Administrative Rules require identification of landslide hazard areas in stewardship plans for road construction and maintenance and timber harvesting (OAR 629-623-0000 to 0800). Timber harvest and road construction are not allowed on sites with 'substantial downslope public safety risk' and harvesting activities that occur on other high landslide hazard areas must use specific practices to prevent ground disturbance. However, hazards are defined only as they relate to risk for losses of life and property, not water quality. NOAA and EPA would like Oregon to explain, how these new amendments protect surface water quality, if at all.

The ODF is also making progress on adopting new rules to address riparian and fish passage recommendations. According to the March 2003 submittal, draft rules were to be presented to the Board of Forestry in June 2003 and adopted October by 2003. However, NOAA and EPA have not been notified about the status of these rules or what specific changes the new/proposed rules will make. Oregon needs to provide NOAA and EPA with an updated status report on the riparian and fish passage rules. ***(AC: Does anyone know if this has this really occurred??? What do the rules say? Do they address our concerns?)***

Although the State is making progress to address many of the IMST recommendations, very little progress has been made in addressing the cumulative effects from forestry (IMST Recommendation #2). NOAA and EPA recognize that implementing Recommendation #2 will require a significant policy change and may take several years to complete. If Oregon chooses to continue to apply the FPA consistently statewide, then our expectation would be that Oregon demonstrate a commitment to implement this recommendation. For example, the State should supply NOAA and EPA with a time line, for implementing IMST Recommendation #2.

Under OAR 629-635-120, Oregon has the authority to develop and adopt basin specific rules for forestry in watersheds that have been designated as water quality limited. Therefore, Oregon may choose to address the cumulative effects from forestry through this method rather then amending the entire FPA. However, the State must demonstrate a commitment to implement Recommendation #2 or a similar program to address cumulative impacts of forestry.

The State also has several voluntary programs under the Oregon Plan for Salmon and Watersheds including projects for road surveys and improvement, fish passage, large wood placement, monitoring, and education that address their need for additional management measures for forestry. For example, Road Erosion and Risk Projects identify roads that present risks for salmon recovery, particularly targeting "legacy" roads, and establish priorities for reducing these road-related risks. All roads on land belonging to members of Oregon's Forestry Industry Council are assessed through this program as well as some of the industrial and non-industrial forestlands ***(AC: Is this a significant amount of forest land within 6217 boundary? What % of forest land is represented in this survey?***). The State estimates that the forestry industry spends $13 million per year on road improvement projects in the coastal zone ***(AC: Do we have more concrete figures and info on recent spending patterns?)***. In addition,

the State Forests Program spent over $25 million between 1997-1999 on road restoration projects and are proposing to spend an additional $2.5 million over the next two years. These projects are valuable and worth tracking and reporting as part of program implementation. However, the information Oregon has provided on the amount of money that is directed toward these efforts is outdated. The State needs to provide NOAA and EPA with current funding information for these voluntary programs to demonstrate that Oregon is still dedicated to carrying out these programs.

NOAA and EPA urge the State to move forward expeditiously to implement these recommended additional management measures, either through application of basin specific rules or changes to the FPA and OARs. Ensuring that Oregon's forestry program provide adequate protection from small and non-fish bearing streams and addresses the cumulative impacts of forestry is very important. After all, forestry is the predominant land use in the State's coastal watersheds. In addition, the FPA and OARs are most often put forward as the implementation plan for TMDLs on private and state forest lands.

Technical Assistance

NOAA and EPA have determined that Oregon has satisfactorily developed a program to provide technical assistance. As described in the October 2002 submittal, Oregon has a number of ongoing grant programs, publications, and workshops that provide technical assistance to support implementation of additional management measures. The State has adequately described the type of technical assistance provided (grants, technical assistance documents, training workshops); the agencies providing the technical assistance (DLCD, DEQ, OWEB, ODF); the intended recipients (coastal jurisdictions, watershed councils, individual land owners, forest operators); and a schedule of availability as required in the *Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance* (NOAA and EPA, January 1993).

RECOMMENDATIONS

III. MONITORING

In order to fully satisfy the condition on addition management measures for forestry, NOAA and EPA recommend the State do the following:

CONDITION: Within one year, Oregon will include in its program a plan that enables the State to assess over time the extent to which implementation of management measures is reducing pollution loads and improving water quality.

- *Explain how the new FPA amendments for roads and landslides will protect water quality as well as public safety.*

- *Provide updated information on the status of the proposed riparian and fish passage rules. Provide NOAA and EPA with a copy of the new rules to review for consistency with the additional management measure condition.*

- *Provide more recent information on funding expenditures for voluntary road improvement programs within the 6217 boundary.*

FINDING: Oregon has satisfied this condition.

RATIONALE:

Oregon has developed a monitoring plan that enables the State to assess over time the extent to which the management measures are being implemented and improving water quality.

First of all, the Coastal Nonpoint Program's 5/15 year plan describes the monitoring plan for Oregon's Ambient Water Quality Monitoring Program. The Monitoring Program has established a statewide rotating schedule for monitoring set reference sites and randomly selected sites for compliance with the State's water quality standards. Every year, the State samples 20% of both their reference and random sites for various parameters including temperature, sediment, dissolved oxygen, biological criteria, pH, stream fertility, and some toxics. Depending upon the parameter sampled, Oregon has 50 or 75 established reference sites within the 6217 boundary and another 50 or 150 random sites. In addition, the State also conducts an estuarine monitoring program that specifically samples for temperature, salinity and bacteria in shellfishing areas. The State uses this monitoring information to develop 305(b) reports and TMDL Watershed Management Plans which may require additional management measures.

Senate Bill 945 also directs the Oregon Watershed Enhancement Board (OWEB) to develop and implement a statewide Monitoring Program in coordination with state natural resource agencies for activities conducted under the Oregon Plan for Salmon and Watersheds, many of which are relevant to the (g) measures. *A Monitoring Strategy for the Oregon Plan for Salmon and Watersheds* describes the framework for the OWEB monitoring strategy. The Strategy includes assessing general status and trends for physical habitat and biotic conditions in selected sub-watersheds; documenting implementation of OWEB restoration projects; and evaluating the local effectiveness of restoration efforts by monitoring representative samples of specific project,

activity and program types. Finally, the State will integrate information from multiple sources to produce data products and reports that assess restoration efforts and evaluate progress towards recovery goals.

AC: OWEB Strategy sounds great but is there any progress toward implementing? Funds dedicated etc? OR was conditioned on "plan" which they have satisfied but would be nice to know if they are working toward implementing it.

Forestry is the dominant land use within the 6217 boundary. Therefore, to better assess the implementation and effectiveness of the Forestry Practices Act (FPA), which is consistent with the (g) guidance, the Oregon Department of Forestry (ODF) carries out the Forest Practices Monitoring Program. The ODF's monitoring program described in the December 2002 *Forest Practices Monitoring Program Strategic Plan*, involves both BMP implementation and effectiveness monitoring. All monitoring data is available in a central database as part of the State of Forests Integrated Information System and ODF analyzes and reports on the information collected annually. The ODF has already released several monitoring studies including the effectiveness of forest road sediment and drainage control practices, harvest effects on riparian areas, effectiveness of the FPA at obtaining temperature standards, and a comprehensive study on BMP implementation. Based on the monitoring conducted, each report recommends changes to the FPA to the Board of Forestry in order to improve the forestry program.

NOAA and EPA strongly encourage Oregon to continue to implement and improve upon the various monitoring programs that comprise their Coastal Nonpoint Control Program monitoring network. Specifically, the State should continue to dedicate sufficient staff and resources to carry out the monitoring programs. The ODF should also ensure that they continue to conduct comprehensive BMP implementation studies on a regular basis and work towards implementing recommendations from past monitoring studies in a timely manner. In addition, Oregon should strongly consider developing a tracking/assessment program similar to the Forest Practices Monitoring Program for other select measures that address significant land uses within the 6217 boundary, such as key urban or agricultural measures.